S.B.CIVIL WRIT PETITION NO.471/1995

Pramod Kumar Nagpal
v.
Cotton Corporation of India & Ors.

DATE OF ORDER :: 16th January, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.K.Kaushik, for the petitioner.
Mr. Vijay Agarwal, for the respondents.

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The petitioner was subjected to a domestic inquiry under the Cotton Corporation of India Ltd. Employees Conduct, Discipline and Appeal Rules, 1975 (hereinafter referred to as "the Rules of 1975") for violating Rules 5(iv) and 4(1)(iii) of the said Rules. The charges framed against the petitioner under a memorandum dated 12.5.1982 reads as follows:-

"A R T I C L E – I

That Shri Pramod Kumar Nagpal of Sriganganagar while applying for the job of Jr.Cotton Purchaser in the Cotton Corporation of India Ltd., Northern Region, submitted a fake certificate of experience, with a view to secure the said job.

Shri Pramod Kumar Nagpal thus violated Rule No.5(IV) of C.C.I. (CDA) Rules, 75.

A R T I C L E – II

That Shri Pramod Kumar Nagpal of Sriganganagar in his application for the job

> of Jr.Cotton purchaser in the Cotton Corporation of India, Northern Region stated that during his so called employment, he used to draw a salary of Rs.450/- p.m. & in the basic data form submitted after joining the Corporation, he stated this salary to the tune of Rs.500/- p.m.
>
> Shri Pramod Kumar Nagpal, thus violated Rule No.5(IV) and 4(I)(III) of C.C.I. (CDA) Rules, 75."

Rules 5(iv) and 4(1)(iii) are prescribed under the Rules of 1975 in following terms:-

> "5. Misconduct
> (iv)Furnishing false information regarding name, age, father's name, qualifications, ability or previous service or any other matter germane to the employment at the time of employment or during the course of employment.
>
> 4. General
> (1) Every employee of the Corporation shall at all times,
> (iii)do nothing which is unbecoming of a public servant."

On denial of the allegations of misconduct by the petitioner the disciplinary authority instituted a regular inquiry to probe the allegations of misconduct by appointing Shri O.P.Saini, a retired District and Sessions Judge as inquiry officer. The inquiry officer in presence of the petitioner recorded statements of

M/s R.K.Gupta, Mahendra Kumar Chopra and Harbanslal in support of the charge and M/s Deedar Singh, Satyanarain and the petitioner himself were examined as witnesses in defence with an opportunity to the parties concerned to cross examine them. The inquiry officer submitted report of the inquiry to the disciplinary authority, a copy whereof was supplied to the petitioner under a memorandum dated 23.2.1984 seeking his representation on the proposed penalty i.e. of removal from service. After considering the representation submitted by the petitioner the disciplinary authority on 31.3.1984 ordered for removal of the petitioner from service. An appeal preferred by the petitioner assailing validity and propriety of the order dated 31.3.1984 also came to be rejected by the appellate authority under an order dated 15.10.1984, hence this petition for writ is preferred.

The challenge to the entire proceedings of the inquiry is given on following grounds:-

> (1)the petitioner being an industrial workman could have not been subjected to the Rules of 1975 as Rule 2 debars the application of the said Rules for the workman governed by the Standing Orders and by the Industrial Disputes Act, 1947;
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> (2)the entire proceedings of the inquiry stands vitiated being Shri O.P.Saini not a

> public servant i.e. an essential requirement for being an inquiry officer under Rule 25 (2) of the Rules of 1975; and
>
> (3)no adequate opportunity was given to the petitioner to defend himself.

A reply to the writ petition has been filed on behalf of the respondents in general defending the order passed by the disciplinary authority as well as by the appellate authority.

Heard counsel for the parties and also examined the record.

The first contention of the counsel for the petitioner to challenge the domestic inquiry is that the petitioner being an industrial workman could have not been subjected to the Rules of 1975 in light of Rule 2, that reads as follows:-

> 2. Application
> These rules shall apply to all employees except:
> (i)Those in casual employment or paid from contingencies;
> (ii)Those governed by the Standing Orders under the Industrial Disputes Act, 1948."

It is asserted by counsel for the petitioner that the petitioner was holding the post of Junior

Cotton Purchaser and, therefore, he was a workman as defined under the Industrial Disputes Act, 1947, his service was governed and regulated by the Standing Orders, therefore, no inquiry could have been conducted against him under the Rules of 1975. Reliance is also placed by counsel for the petitioner on the definition of the "workman" as given under Rule 3(b) of the Rules of 1975 that means a person as defined under the Industrial Disputes Act, 1948, and to whom the provisions of the Rules of 1975 shall not apply.

I do not find any force in the contention so raised for the reason that under the Standing Orders also misconduct are prescribed and the act of the petitioner on basis of that charge framed under the Rules of 1975 was also prescribed as misconduct under the relevant Standing Orders. The procedure prescribed and adhered by the respondents while conducting domestic inquiry is in no way less effective than the procedure prescribed to hold a domestic inquiry under the Standing Orders. The intention of giving a procedure to hold an inquiry is to apply the principles of natural justice by providing adequate opportunity to a delinquent employee to defend himself, therefore, it is not material that what are the Rules referred while holding the inquiry but is that whether adequate opportunity was given for defence and if some procedure prescribed is not

followed, then how that has effected the right of defence prejudicially. In the instant matter learned counsel for the petitioner utterly failed to satisfy as to how holding of an inquiry in accordance with the procedure prescribed under the Rules of 1975 has caused prejudice to the petitioner.

I also do not find any force in the second contention of counsel for the petitioner that the entire inquiry stands vitiated being Shri O.P.Saini, not a public servant.

Rule 25(2) of the Rules of 1975 prescribes that whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into or appoint any public servant to inquire into the truth thereof.

While relying upon the provision above it is asserted by counsel for the petitioner that Shri O.P.Saini being a retired employee was not a public servant and, therefore, he was erroneously appointed as inquiry officer and that makes the entire domestic inquiry illegal.

As stated above, Shri O.P.Saini was a retired Judicial Officer and may he be not a public servant

after retirement from service but his appointment and holding of inquiry against the petitioner does not vitiate the inquiry proceedings. It is well settled that any person challenging the inquiry proceedings is required to satisfy the prejudice caused to his right of defence. By appointment of Shri O.P.Saini as inquiry officer no prejudice was caused to the rights of the petitioner, therefore, no wrong is detected in domestic inquiry on this count.

The third contention of counsel for the petitioner is that no adequate opportunity was given to the petitioner to defend himself, however, counsel for the petitioner failed to point out any event on basis of that it can be said that adequate opportunity for defence was not given. It is repeatedly stated by counsel for the petitioner that the copies of the statements of defence witnesses were not supplied to him and that resulted into violation of principles of natural justice. The statement of counsel for the petitioner is having no foundation as from reading of the inquiry report it is clear that the statements of all the prosecution witnesses were recorded in presence of the petitioner and an opportunity of cross examination was also given to him.

In view of whatever discussed above, I do not find any illegality in the order passed by the disciplinary authority as well as by the appellate

authority. Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR),J.

kkm/ps.